

# Imperial Marriages and Their Critics in the Eleventh Century: The Case of Skylitzes

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“The women’s quarters in the palace had been the scene of utter depravity ever since the infamous Constantine Monomachos had ascended the throne and right up to the time when my father became emperor, and had been known for foolish love intrigues,” wrote Anna Komnene to describe palace morals before the reformation effected by her grandmother, Anna Dalassene.<sup>1</sup> Foolish love intrigues were far from unknown in the Comnenian court, especially in the days of Manuel I and Andronikos I; even Alexios Komnenos had had his relatively tame share of them.<sup>2</sup> In the eleventh century, however, the intrigues of the imperial bedchamber had a different, and heavier, import, for they made and occasionally unmade emperors. In the days of dynastic instability, between the death of Constantine VIII and the accession of Alexios Komnenos, twelve rulers (including Zoe and Theodora) ascended the throne and four of them (Romanos III, Michael IV, Constantine IX, and Romanos IV Diogenes) did so by virtue of their marriage to an imperial princess or empress. A fifth emperor, Nikephoros III Botaneiates, came to the throne as the result of his own rebellion and the conspiracy of a number of senators and members of the high clergy, but he sought to solidify his accession by marrying an empress, Maria “of Alania,” actually a Georgian, wife of the deposed Michael VII Doukas.<sup>3</sup> All of these mar-

riages were highly problematic, however, for each was either illegal or uncanonical. The marriage of Eudokia Makrembolitissa to Romanos IV Diogenes had its own particular problems, since the empress had to break a solemn oath to make it.<sup>4</sup> As for the other marriages, they were either uncanonical third marriages, tainted by adultery, or flawed in other ways. None was dissolved; nor, as far as we know, did the church formally impose penance on any of the contracting parties, although it came close to doing so in the case of Michael IV, and although late in the century the specter of annulment hovered for a moment over Botaneiates.<sup>5</sup> But if the church was, generally speaking, accommodating, the problematic nature of the imperial marriages was nevertheless obvious to contemporaries. The historians of the eleventh century commented on these marriages, sometimes criticizing them sharply.

That the historian could function as a critic of imperial morals was nothing new in this period. What is interesting is the manner of the criticism; what the historians, individually and collectively, stressed and what they chose to ignore; what they

<sup>1</sup>The *Alexiad* of Anna Komnene, trans. E. R. A. Sewter (Harmondsworth, 1969), 120 (III.8).

<sup>2</sup>Ioannes Zonaras, *Epitomae Historiarum libri XVIII*, Bonn ed. (1897), III, 747.

<sup>3</sup>Speros Vryonis, Jr., “Byzantine Imperial Authority: Theory and Practice in the Eleventh Century,” in *Islam, Byzantium, Occident*, ed. G. Makdisi, D. Sourdel, and J. Sourdel-Thomine (Paris, 1982), 150. The importance attached by Botaneiates and his entourage to his marriage to an empress or a former empress may be gauged by his desire to marry either Eudokia, widow of Constantine X, or Maria of Alania. It is significant that, although he had at least one grandson, he considered himself

without heirs insofar as the throne was concerned, presumably because he had no children with Maria: *Alexiad*, II.2, II.5. On Maria (Martha) see I. M. Nodia, “Gruziskie materialy o vizantijskoj imperatritse Marfe-Marii,” *Vizantinobulgarские труды* (1978), 146–55; U. M. Hogus (= I. M. Nodia), “Gruzinskie materialy o vizantijskoj imperatritsy ‘Alanki’ Marii,” *Actes du XVe Congrès international d’études byzantines*, IV, *Histoire: Communications* (Athens, 1980), 138–43, and M. Mullett, “The ‘Disgrace’ of the Ex-basilissa Maria,” *BSI* 45 (1984), 202–11. I owe the last three references to the kindness of A. P. Kazhdan.

<sup>4</sup>N. Oikonomides, “Le serment de l’impératrice Eudocie (1067),” *REB* 21 (1963), 101–28.

<sup>5</sup>On the church’s position on such problems in the 13th century, see D. M. Nicol, “Mixed Marriages in Byzantium in the Thirteenth Century,” *Studies in Church History* 1 (1964), 160. As Nicol notes, this attitude was not constant; there had been times, mostly in the 10th century, when imperial marriages were very much brought into question by the church.

found most objectionable and what they considered excusable. To the extent that their attitudes reflect the concerns of lay society or the church, it can shed light on them. To the extent that the criticism forms part of *Kaiserkritik*, it can instruct us on the forms and limitations of the genre and provide insight into concepts of the emperor's freedom, or otherwise, from the laws. Finally, a comparison of the statements of the major eleventh-century historians will show significantly individualized attitudes and positions, together with broadly shared assumptions.

It is not surprising that the problematic marriages of the eleventh century gave rise to comment, for this was a period in which matrimonial issues were becoming highly visible, primarily because of the activities of the church. The issue of successive marriages having been settled, at least in theory, by the *Tomos henoseos* (920), the church had, since 997 and the *Tomos* of Patriarch Sisinnios, been engaged in defining the boundaries of consanguinity and affinity within which a marriage was permitted and valid. Debate on these matters continued with increasing force in the eleventh and twelfth centuries, by the end of which period the major questions had been answered, at least insofar as church legislation was concerned. Civil judges, like Eustathios Romaïos and his "school," entered the debate at a relatively early stage,<sup>6</sup> and emperors again began to legislate on matrimony, starting with Nikephoros III's confirmation of Xiphilinos' decree on incestuous marriages, and continuing with Alexios I's legislation on betrothals.<sup>7</sup>

The eleventh century also witnessed an increased interest in jurisprudence, highlighted by the famous novel of Constantine IX (1047) that sought to restructure legal instruction. The historians of the period, Michael Psellos, Michael Attaleiates, and John Skylitzes, were all jurists and judges, knowledgeable in both civil law and the canonical regulations regarding marriage. Although it was entirely possible at that time to reach high judicial office without any knowledge of the laws and with no moral incentive to enforce them, the historians of the period were hardly ignorant of

legal matters.<sup>8</sup> Michael Psellos had been a provincial judge before going to Constantinople as a court official. He was interested in the theory of law, and he wrote a *Synopsis legum* in verse, as well as a number of short legal treatises, including one on the seventh degree of consanguinity as an impediment to marriage; his notes circulated in the form of pamphlets or booklets. His library included a considerable number of juridical and canonical writings.<sup>9</sup> Michael Attaleiates had served as provincial judge (in Crete) and judge of the army under Romanos IV, and then became *κριτής ἐπὶ τοῦ ἱπποδρομίου καὶ τοῦ βήλου*.<sup>10</sup> His writings include a good epitome of the *Basilics*, commissioned by Michael VII and possibly written to counter Psellos' *Synopsis*.<sup>11</sup> Skylitzes, born sometime in the 1040s, is identical with Ioannes Thrakesios, who, under Alexios I, reached the high offices of *kouropalates* and *droungarios tes vigles*.<sup>12</sup> The tradition of jurists who wrote history continued into the

<sup>8</sup>On jurisprudence and legal studies in the 11th century, see W. Wolska-Conus, "L'école de droit et l'enseignement du droit à Byzance au XI<sup>e</sup> siècle, Xiphilin et Psellos," *TM* 7 (1979), 1–103; P. Lemerle, *Cinq études sur le XI<sup>e</sup> siècle byzantin* (Paris, 1977), 196 ff. The novel of Constantine IX speaks to the lack of learning of the judges. Psellos himself managed to make his prospective son-in-law a high-ranking judge, although the man's qualifications were all negative: K. N. Sathas, *Μεσαιωνική βιβλιοθήκη*, V (Paris, 1876), 203–12, and P. Lemerle, "Roga' et rente d'Etat aux Xe–XI<sup>e</sup> siècles," *REB* 25 (1967), 84–88.

<sup>9</sup>The bibliography on the 11th- and 12th-century historians being very rich, only an exercise in unbecoming zeal would excuse exhaustive references to it. The interested reader may follow up the references in H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, I (Munich, 1978). On Psellos, see in particular J. N. Ljubarskij, *Mihail Psell, Ličnost i tvorčestvo k istorii vizantijskogo predgumanizma* (Moscow, 1978). On his career and juridical writings, see G. Weiss, "Die juristische Bibliothek des Michael Psellos," *JÖB* 26 (1977), 79–102; idem, "Die Synopsis Legum des M. Psellos," *Fontes Minores*, II (1977), 147–214; idem, *Oströmische Beamte im Spiegel der Schriften des M. Psellos* (Munich, 1973), 8 ff, 283 ff, and passim; idem, "Untersuchungen zu den unedierten Schriften des M. Psellos," *Βυζαντινά* 2 (1970), 343–44. On the circulation of his notes, see Wolska-Conus, "Xiphilin et Psellos," 60 ff. Cf. R. Anastasi, "Sugli scritti giuridici di Psello," *Siculorum Gymnasium, Rassegna della Facoltà di lettere e filosofia dell'Università di Catania* (1975), 169–81. On his treatise regarding the seventh degree of consanguinity, see Pitsakis, *Τὸ κώλυμα γάμου*, 303–11.

<sup>10</sup>Hunger, *Literatur der Byzantiner*, I, 382 ff, with bibliography. On Attaleiates, see also A. P. Kazhdan, "The Social Views of Michael Attaleiates," in his *Studies on Byzantine Literature of the Eleventh and Twelfth Centuries* (Cambridge, 1984), 23–86.

<sup>11</sup>M. Attaleiates, *Ποίημα Νομικόν*, in Zepos, *Jus*, VII, 415 ff. It was written at the request of Michael VII Doukas. On its relationship to Psellos' *Synopsis*, see Wolska-Conus, "Xiphilin et Psellos," 97–100. According to Tsolakes, the part of the history of interest to us was written after Botaneiates' deposition and death: E. Th. Tsolakes, "Das Geschichtswerk des M. Attaleiates und die Zeit seiner Abfassung," *Βυζαντινά* 2 (1970), 253–68.

<sup>12</sup>On Skylitzes, see Hunger, *Literatur der Byzantiner*, I, 389–93. I follow the chronology proposed by W. Seibt, "Ioannes Skylitzes: Zur Person des Chronisten," *JÖB* 25 (1976), 81–85, which in turn embraces Tsolakes' identification of the Continuator of

<sup>6</sup>The most fought-over issue was the question of whether the seventh degree of consanguinity constituted an impediment and if so, whether the impediment was diriment: on this, see the learned book by K. Pitsakis, *Τὸ κώλυμα γάμου λόγω συγγενείας ἑβδόμου βαθμοῦ ἐξ αἵματος στὸ Βυζαντινὸ δίκαιο* (Athens, 1985). On what follows, see also my forthcoming book, *Marriage, amour et parenté à Byzance aux XI<sup>e</sup>–XIII<sup>e</sup> siècles*, especially chaps. 1 and 4.

<sup>7</sup>Zepos, *Jus*, I, 288–90, 305–25.

twelfth century with Ioannes Zonaras, who, before becoming a monk, had been *megas droungarios tes vigles* and *protasekretis*; he became, of course, a very great canonist.<sup>13</sup> Thus the comments or lack of comment of all these historians on the problematic imperial marriages of the eleventh century must be considered against the background of the authors' familiarity with and sometimes profound knowledge of the laws of church and state.

The analysis that follows is based, in the first instance, on the Chronicle of Skylitzes and its continuation. I have chosen Skylitzes as the major source partly because of his merits as a historian and partly because of his competence as a jurist; he was a much more circumstantial historian than Psellos, and as a jurist he was involved in questions of matrimonial law during the reign of Alexios I. He had, as is well known, a particular view of his role as a historian: in his prologue he criticized previous historians (specifically Psellos) for omitting the most important details from their account, while also accusing others among them for writing either laudations or detractions instead of objective history.<sup>14</sup> He himself aimed at writing a relatively short account, which would provide a full understanding of events. Indeed, he frequently does adduce more details than Psellos' discursive and volatile history. With regard to the problematic imperial marriages, his terse prose sometimes offers not only the fullest details but also the most outspoken critique. He exhibits here an independence from Psellos which is quite striking, and which raises questions about the statement that his criticism of emperors can hardly be distinguished from that of Psellos.<sup>15</sup> Second, assuming that the Continuation of his Chronicle was written by Skylitzes himself, his account is the only one to cover

all of the problematic eleventh-century marriages.<sup>16</sup> As a jurist, too, he is of particular interest. His known legal writings are only three, but one of them shows a certain independence of mind. That is his *hypomnēma* to Alexios I, in which Skylitzes questioned the wisdom of some of the provisions of that emperor's novel on betrothal, and pointed out that it is not to the state's benefit to have laws that go against social practice, and thus force people to break them.<sup>17</sup> He is also known to have written a treatise in which he argued against the application of the *Tomos* of Sisinnios in the case of a marriage of uncle and nephew with an aunt and niece (probably written ca. 1092).<sup>18</sup> In both these legal briefs (although the text of the second is not extant), Skylitzes distances himself from the increasingly invasive role of the church in matrimonial matters and seems to oppose legislation that was contrary to widespread custom. One might well argue that this is the position of a practical jurist, with high respect for the law, who does not like laws that beg to be broken. Since both the historicity of the account and the author's knowledge of the law are essential elements in our evaluation of the critique, it has seemed best to focus on Skylitzes and compare the statements of the other eleventh-century historians, and sometimes also Zonaras, to his views.

The marriage of Zoe to Romanos III Argyros presented two problems. First, at the time the marriage was being contemplated by the dying emperor Constantine VIII, Romanos already had a wife. A ruse of Constantine VIII's persuaded the wife (her name, attested by Skylitzes, was Helen) to take the veil, and Argyros was therefore considered free to remarry.<sup>19</sup> Not everyone agreed that this was a proper solution to the problem: according to Skylitzes, Zoe's sister, Theodora, refused Romanos' hand, "either because of kinship, as they say, or because his wife was still alive."<sup>20</sup> Questions were raised about the degree of kinship between

Skylitzes as Skylitzes himself: see E. Th. Tsolakes, 'Η συνέχεια τῆς Χρονογραφίας τοῦ Ἰωάννου Σκυλίτζη (*Ioannes Skylitzes Continuatus*) (Thessaloniki, 1968), 75–79. Skylitzes would have been born shortly after 1040, would have written the first part of his Chronicle in the 1070s and the second part after 1101. For contrary views on the identification of "Skylitzes Continuatus," see Kazhdan, "Social Views of Attaleiates," 33 note 7.

<sup>13</sup> Hunger, *Literatur der Byzantiner*, I, 416 ff; *DTC*, VI, 129–30; F. Tinnefeld, *Kategorien der Kaiserkritik in der byzantinischen Historiographie von Prokop bis Niketas Choniates* (Munich, 1971), 144–47. He wrote his chronicle while he was a monk, not long after 1118.

<sup>14</sup> *Ioannis Scylitzae Synopsis Historiarum*, ed. I. Thurn (Berlin, 1973), 3–4; cf. Michel Psellos, *Chronographie*, ed. E. Renauld (Paris, 1926), I, 152–53.

<sup>15</sup> For a contrary view, see Tinnefeld, *Kaiserkritik*, 120 note 373. His sources for the period 1025–57, apart from Psellos, have not been identified. In his prologue he lists a number of authors and adds that he also used the oral testimony of old men.

<sup>16</sup> Zonaras, of course, also covers the entire period, going even beyond 1079 where the continuation of Skylitzes stops. However, for the 11th century and the issues under discussion, he has no information independent of Psellos, Skylitzes, or Attaleiates; his judgment is, occasionally, his own.

<sup>17</sup> Zepos, *Jus*, I, 319–21.

<sup>18</sup> See *Procheiron auctum*, 8.50, and cod. Vindob. iur. gr. 13, fol. 90r. I am grateful to Dr. Andreas Schminck for having made available to me his transcription of this document, which, as he says, must have been written soon after 1118. The third text is another *hypomnēsis* to Alexios I, published by H. J. Scheltema, "Une pétition à l'empereur Alexis Comnène de l'an 1085," *RIDA* 4 (1950), 457–63.

<sup>19</sup> Skylitzes, 373–74; Psellos, I, 30–31; Zonaras, III, 572–73.

<sup>20</sup> Skylitzes, 374. Psellos does not mention this objection, nor does Yahya ibn-Said of Antioch. Zonaras, III, 573, says that

the two, and it was only after the issue had been resolved by a synodical decision that the marriage took place.<sup>21</sup>

Divorcing one's spouse in order to enter a monastery was perfectly acceptable, at least since the time of Justinian's novels 22 and 117. This *bona gratia* divorce allowed the remaining spouse to remarry. The legal issue involved in the remarriage of Romanos Argyros, therefore, was whether or not his first wife had entered the monastery willingly. Skylitzes' account legitimizes the divorce and therefore the remarriage. As he tells the story, Romanos Argyros was brought to the palace and given the choice of either divorcing his legitimate wife and marrying Zoe, or being blinded. His wife, fearing for his safety, had her hair shorn *voluntarily*, and thus gave Romanos, along with his sight, the empire. It is important to remember that Skylitzes, but not Psellos, specifically mentions a divorce, and that he uses the term *ἐκονσίως* for Helen's decision, an adverb repeated by Zonaras (who relies on Skylitzes) but not used by Psellos. By claiming that there was a divorce and that Helen entered the monastery of her own free will, Skylitzes makes the marriage unproblematic. He also mentions that upon his former wife's death, Romanos III gave many alms, thus suggesting a commendable affection on his part.<sup>22</sup>

That this was the story given out by some source favorable to Argyros is made clear by the statements of Yahya ibn-Said of Antioch, who provides the longest description of these events. He, too, reports the ruse, undertaken by Constantine VIII because of his conviction that Romanos should be his successor. He claims that Alexios the Studite "accommodated Constantine the King by divorcing Romanos from his wife, because of the benefit accruing to all in the Kingdom of Rum." By his account, it was after this action that Romanos' wife, totally ignorant of all that had happened, was summoned by Constantine, who voiced the threat to Romanos' eyesight and said to her that "if she chose that his life be prolonged, her hair would be shaven and she would become a nun *by her choice*," and also promised her a convent with a specified annual revenue. "And because of the pity for her husband in the matter of the blinding, since each

of them was enamored of the other, in the end she gave in to what he requested, and she gave her assent to becoming a nun."<sup>23</sup> Yahya ibn-Said and Skylitzes agree on two important points: that there was a divorce, and that Helen submitted to her fate "voluntarily," although clearly under duress. Presumably the two authors drew their information from the same source, or from sources with a similar view of the matter.

Psellos, on the other hand, stresses the fact that Helen did not consent to her husband's marriage of Zoe. She was duped by the ruse, not seeing it for what it was, and because she was duped she submitted to the plan. The implicit suggestion is that her compliance was involuntary. Skylitzes' and Psellos' use of grammar also makes the same point: while Skylitzes uses the middle voice to describe her tonsure (τὴν κοσμηκὴν ἐκονσίως ἀπέθετο τρίχα) Psellos uses the passive: τὰς τρίχας ἀποτηθεῖσα . . . ἐπὶ τὸ καταγώγιον μετατίθεται. Zonaras, trying to reconcile the two accounts, as he often does, uses the adverb "voluntarily" to describe Helen's action, but says that Theodora refused to marry Argyros because she had heard that his wife had divorced him involuntarily.

The differences between the two eleventh-century Greek sources are interesting. Skylitzes alludes to the legal issue more clearly than Psellos, but finds it resolved by what amounts to a *bona gratia* divorce. Psellos is more vague on the legal implications, but suggests the cloistering was involuntary. If Helen's submission had, in fact, been considered involuntary, the matter could, at least in theory, have become very serious; it was just such actions that had led to the Moechian Schism. But Byzantine society in the eleventh century was very different from what it had been at the time of Theodore of Stoudios and Constantine VI. And it is important to note that none of the historians explicitly mentions the illegalities involved; it was not until the marriage of Botaneiates that the word

Theodora did not wish to marry him because she had heard that his wife was divorced from him involuntarily.

<sup>21</sup> Skylitzes, 374; Cf. V. Grumel, *Les régestes des actes du patriarche de Constantinople*, I, fasc. 2 (1936), no. 836.

<sup>22</sup> Skylitzes, 386.

<sup>23</sup> *Annales Yahya Ibn Said Antiochensis*, ed. L. Cheikho, S. J., B. Carra de Vaux, and H. Zayyat, CSCO, *Scriptores Arabici*, ser. 3, vol. 7 (Beirut, 1909), 250–51. My colleague, Prof. Roy Mottahedeh, very kindly translated for me this passage and the others discussed below. I should like to express here my profound thanks. R. Rozen's translation (*Imperator Vasilij Bolgarobojca* [St. Petersburg, 1883; repr. London, 1972]), 71–72, stops in the middle of the discussion of Romanos' marriage. M. Canard, "Les sources arabes de l'histoire byzantine," *REB* 19 (1961), 302 ff, suggests that for this period Yahya used both living informants and unidentified ecclesiastical sources. Certainly his source for this affair had an intimate knowledge of what was happening in Constantinople, even if Zoe's name is misreported as "Irene."

“adultery” would be used to describe a marriage effected by the forced tonsure of the previous spouse.

Skylitzes is also the only eleventh-century historian to suggest that there was a question raised about the possibility of an impediment by reason of kinship between Zoe and Argyros. He is, as usual, laconic: λόγου δὲ περὶ τῆς συγγενείας κινήθεντος, καὶ τῆς ἐκκλησίας σὺν τῷ πατριάρχει λυσάντων τὸ ἀμφίβολον, ἱερολογεῖται ὁ Ῥωμανὸς τῇ Ζωῇ. . . . The disputed impediment concerned the degree in which Zoe and Romanos were related, as a result of the marriage of two daughters of Romanos Lekapenos to Constantine VII and Romanos Argyropoulos. Most scholars have assumed that the imperial couple was related in the eighth degree, still at this point outside any dispute.<sup>24</sup> However, the statement of Yahya of Antioch, which is the only one to provide the details of the relationship, leaves no doubt on the matter. “The fathers of the two of them (i.e., of Constantine VIII and Romanos Argyros) were both sons of maternal aunts, since Constantine, son of Leo (i.e., Constantine VII), was the grandfather of Basil (II) and Constantine the King, and Argyropoulos was the grandfather of this Romanos, and the two grandfathers were joined by marriage with the two daughters of Romanos the Elder (Lekapenos). . . .” Although the term for grandfather, Professor Mottahedeh informs me, could also mean male ancestor, and thus, possibly, great-grandfather, the “maternal aunts” clarify the issue. Romanos and Zoe were related in the seventh degree. Exactly what the patriarch and the synod found in 1028 had not, until recently, been clear. It has been correctly pointed out by K. Pitsakis that Skylitzes’ phrasing suggests that the investigation discovered no impediment, rather than that the patriarch solved a real problem by dispensation. The solution is quite simple. In 1028 the seventh degree of kinship did not yet constitute an impediment to marriage; it was only in 1038 that Patriarch Alexios the Studite declared it an impediment to marriage, although not a diriment one.<sup>25</sup> At the

time of Zoe’s marriage, the debate had begun, and the church’s position was split. Demetrios Synkellos, metropolitan of Kyzikos, wrote an impassioned treatise in which he argued vehemently that impediments stopped with the sixth degree of consanguinity.<sup>26</sup> Most probably this position prevailed in the deliberations of the church in 1028. It is pertinent to note that Yahya does not in the least present the relationship as a possible impediment; on the contrary, he insists that it was because of it that Constantine VIII wanted Romanos to succeed him. Skylitzes probably got his information from an ecclesiastical source, which would be interested in the matter. If so, it was a source that was close to the position of Demetrios Synkellos. Skylitzes, in his brief mention of this matter, takes a position consistent with what we know of his policy as a judge, namely, one opposed to the extension of impediments to marriage that was being elaborated by the church. It is also to be noted that, since the issue was legally resolved, it no longer concerned him.

Skylitzes’ approach to Zoe’s first marriage, which reduces the legal problems to the vanishing point, is perhaps to be explained by his (or his source’s) generally favorable attitude to Argyros’ reign: the praise of the emperor’s generosity, especially his rescinding of the allelengyon, is followed by mention of favorable divine signs, in the form of good crops, particularly the olive. The discovery of an icon, immured since Iconoclastic times, is no less a sign of divine favor.<sup>27</sup> There is certainly none of the savage irony with which Psellos describes the old emperor’s expectation of progeny from a fifty-year old wife, or his ill-conceived hopes for military glory. Skylitzes, true perhaps to his concept of history, cannot avoid mentioning the problems of the marriage, but he presents the legalistic solution and is satisfied.

Very different is his attitude to Zoe’s second marriage, to Michael IV. True, the problems here were much graver. The least important among them was the fact that, although widows had to observe a year’s mourning before remarrying, Zoe did not even wait a day. Much more serious were the rumors, apparently circulating freely, that Zoe and

<sup>24</sup>For example, see Grumel, in his note to no. 836. Cf. G. Schlumberger, *L’épopée byzantine à la fin du dixième siècle*, III (Paris, 1904), 58 and note 2, who presents Yahya’s testimony inaccurately. J.-F. Vannier, *Les Argyroi* (Paris, 1975), gives a genealogy which would result in eight degrees of kinship (see nos. 8, 11). K. Pitsakis, *Τὸ κώλυμα γάμου*, 149–83, has argued forcefully that Zoe and Argyros were related in the seventh, not the eighth, degree, and provides a genealogical table that reflects the information given by Yahya. I think his argument is correct.

<sup>25</sup>G. A. Rhalles and M. Potles, *Σύνταγμα τῶν θεῶν καὶ ἱερῶν*

*κανόνων*, V (Athens, 1855) (hereafter Rhalles-Potles), 36–37 (Grumel no. 844).

<sup>26</sup>*Ibid.*, V, 354–66, especially 359. For a similar argumentation on the part of a civil judge, see A. Schminck, “Vier eherechtliche Entscheidungen aus dem 11. Jahrhundert,” *Fontes Minores*, III (1979), 252–67.

<sup>27</sup>Skylitzes, 376, 497.

Michael were guilty of adultery, and that they used slow-acting poisons to get rid of the old emperor, who eventually died in his bath in very suspicious circumstances; in short, that they engaged in the kind of behavior that has given Byzantium a bad name. These rumors were never established as fact, for no one dared to bring an action in court. But the sources are unanimous in the belief that there was an adulterous relationship, and in various degrees they also give credence to the idea that Zoe and Michael were responsible for Romanos III's death.<sup>28</sup> Even without murder, a charge of adultery, if proved, would have made the marriage invalid (*Bas.*, 60.42.13).

None of the sources mentions the non-observance of the year of mourning, although there may be a veiled allusion in Zonaras, who states, almost in disbelief, that "some say they married that same night."<sup>29</sup> Yet the law was clear in its provisions: marriage within the year was forbidden, although if it did take place it was not dissolved; there were social and property sanctions against the woman. Furthermore, the law was well known in the eleventh century, as the frequent mentions of it in the *Peira* suggest.<sup>30</sup> It may be that the historians remembered *Basilika*, 21.2.10, according to which the emperor may permit a woman to marry within the year of mourning—and assumed that Zoe had the authority to issue such a dispensation for herself. Or it may be that this infraction was obscured by much greater crimes. In any case, it is worth noting that the same lack of concern appears in the other cases where the year's mourning was not observed, that is, at the time of Eudokia's marriage to Romanos IV, and Botaneiates' marriage to Maria of Alania.

Skylitzes provides the fullest information and passes the harshest judgment on Zoe's second marriage. Whereas Psellos describes in lurid detail the progress of Zoe's infatuation with the handsome young man, an infatuation that reached the point of open and shameless intercourse, Skylitzes briefly labels her passion "a demonic and manic love."<sup>31</sup> And whereas Psellos (and Zonaras, following him) reports as secondhand rumor, for which

he cannot vouch, the information that Zoe and Michael poisoned the emperor, Skylitzes is more uncompromising: "it is said," he writes, that Romanos III was poisoned with slow-acting poisons because the empress wanted to kill him without arousing suspicion, but, unlike Psellos, he does not demur because of his lack of certain knowledge about the facts of the case.<sup>32</sup> Skylitzes discusses the subsequent events in a shocked tone. He asserts that Romanos was killed by Michael's men, something that Psellos does not say. He also relates that on the very night of the murder (Good Friday, to boot), Patriarch Alexios the Studite was ordered to come to the palace in the name of the emperor, who was lying dead; once there, he found Zoe and Michael in the chrysotriklinos, where Zoe forced him (καταναγκάζει) to marry them. The patriarch was astounded (ἴστατο ἐννεός) and hesitated; but he was persuaded to perform the ceremony by an imperial gift of 50 pounds of gold for himself and an equal sum for the clergy. The statement, although unglossed by Skylitzes, is a true denunciation not only of Zoe and Michael but also of the patriarch. It is worthy of note that Psellos does not say a word about this incident, indeed he never mentions, in so many words, the marriage of Zoe and Michael.

Skylitzes' indictment continues, virtually unabated, on the entire reign of Michael IV. "It was proven immediately and most clearly that these things did not please God," he writes, and he proceeds to prove the disfavor by a list of natural catastrophes: on Easter Sunday, hail destroyed houses and churches, ushering in a year of poor crops. A week later, an extraordinarily bright star appeared; there was a terrible plague of locusts; Emperor Michael IV was seized by a "manic illness" which in fact was epilepsy (note the use of the same term, μανικός, for his illness and Zoe's passion).<sup>33</sup> And, most clearly and unambiguously, a servant of the bishop of Pergamum saw in a vision a eunuch of brilliant appearance who ordered him to empty three sacks; out of them came snakes, vipers, scorpions, toads, asps, basilisks, horned serpents, dung beetles, fleas, wasps, and other insects. As the man stood astounded,<sup>34</sup> the eunuch said, "These things have visited you and will visit you for having broken God's commandments, and because of the unholy deed that was

<sup>28</sup>On this, see Psellos, I, 41–56; Skylitzes, 390–93; Zonaras, III, 584–88.

<sup>29</sup>Zonaras, III, 586.

<sup>30</sup>*Basilika* (= *Bas.*), 21.2.10, 21.2.11, 28.14.1–2, 28.5.13; *Synopsis Basilicorum*, 13.2–3; *Peira*, 25.16, 25.47, 24.13, 25.62, 24.8–12.

<sup>31</sup>Psellos, I, 45–46; Skylitzes, 390: ἔρωτα δαιμονιώδη . . . καὶ μανικόν.

<sup>32</sup>Psellos, I, 50–52; Zonaras, III, 582; Skylitzes, 390.

<sup>33</sup>Skylitzes, 393–95.

<sup>34</sup>Skylitzes, 395: ἴστατο ἐννεός, just as Alexios the Studite had done, when asked to bless Zoe's second marriage.

done to Emperor Romanos and to his bed." The empire was being punished because of the murder and adultery of its rulers.

The final criticism levied by Skylitzes is also the most powerful. Having said that Michael IV tried to atone for his sin against Romanos by good works and donations to the poor and the monasteries, he adds: "this would have profited him, if he had given up the empire, for which he had done so many evil things, and *had cast aside the adulteress*. . . . But, since he stayed with her, and held on to the imperial office, and paid for his good deeds from the common and public funds, if he thought he would receive forgiveness he must have considered God to be senseless and unjust, for he tried to buy his repentance with the money of others."<sup>35</sup>

These acid remarks seem to be editorial comments, and Skylitzes' own. They are certainly not present in Psellos, who uses the terms adultery and murder sparingly, saying that except for "the crime committed toward Romanos, and the crime of adultery. . . . he (Michael) would have been placed among the good emperors," and who nowhere calls Zoe an adulteress.<sup>36</sup> Yet Skylitzes does not seem motivated by a dislike of Michael IV; indeed, at the conclusion of the discussion of his reign, he considers him a good, pious, and benevolent man, except for his "sin against Emperor Romanos," and even that might be ascribed to his brother, John.<sup>37</sup> Still, there is no mistaking the penalty he thought Michael should impose on himself: he should annul his marriage (cast out the adulteress) and abdicate the throne. There must have been others who thought along similar lines. For although the patriarch imposed no formal penance and no punishment on Zoe and Michael, nevertheless Skylitzes, Psellos, and Zonaras all say that pious men or monks advised the emperor, among other things, to abstain from all intercourse, even with his wife, thus imposing penance on him; and in the end, at the point of death, he gave up the imperial insignia, became a monk, and refused to see Zoe when she visited him.<sup>38</sup>

It is very probable that, in composing his harsh commentary, Skylitzes had in mind the case of

John Tzimiskes and Theophano, which in some ways parallels that of Michael IV and Zoe. Nikephoros Phokas, like Argyros, was killed as a result of the machinations of Theophano and Tzimiskes. Like Zoe, Theophano is called "adulteress" by Skylitzes.<sup>39</sup> But unlike Alexios the Studite, Patriarch Polyeuktos had exacted penance from Tzimiskes for the murder, and made the expulsion and exile of Theophano a precondition of Tzimiskes' coronation.<sup>40</sup> Like Michael IV, Tzimiskes sought to atone for his sins by distributing alms to the poor; but Skylitzes makes a point of stressing that these alms were from his own private funds, just as he castigates Michael IV for trying to buy salvation with public funds.<sup>41</sup> In short, Tzimiskes did what Michael IV should have done; and the stark mention of the bribing of Alexios the Studite contrasts powerfully with the reported actions of Polyeuktos, who would not even let Tzimiskes enter the church before his conditions had been met.

Skylitzes' position on this may be partly derivative. He certainly had a source that was not Psellos, from which he got the information concerning the patriarch. This was, most likely, an ecclesiastical source, given the signs of divine wrath it catalogues, particularly the story of the servant of the bishop of Pergamum. We have seen that Skylitzes probably made use of an ecclesiastical source in the discussion of Argyros' marriage as well. If the source is the same, its author was someone who was opposed to the extension of ecclesiastical impediments to marriage; who was favorable to Romanos III, as is shown by the positive assessment of his reign, and particularly of the emperor's donations to the church and his elevation of three metropolitans to the rank of synkellos; who therefore must have taken great exception to the murder of Romanos; and who was far from enamored of Patriarch Alexios the Studite. In his prologue,

<sup>39</sup> Skylitzes, 279; cf. Zonaras, III, 501; Leo Diaconus, *Historiae libri decem*, Bonn ed. (1828), 84–92. The passage from Skylitzes is repeated almost verbatim by Theognostos: see J. A. Munitiz, *Theognosti Thesaurus* (Turnhout, 1979), 200.

<sup>40</sup> Skylitzes, 285–86.

<sup>41</sup> Skylitzes, 286; Zonaras, 521. A. P. Kazhdan had already noted the parallelism in his review of Thurn's edition of Skylitzes: *Istoriko-filologičeskij žurnal* 1 (68) (1975), 209. We might note, in passing, that Skylitzes judged Polyeuktos harshly for permitting Nikephoros' marriage to Theophano even though, according to Skylitzes, it was true that he had been godfather to her children (Skylitzes, 261). If, indeed, he is using here the source commonly known as Source A, and favorable to Polyeuktos, it may be that once again he is editorializing. On Skylitzes' sources for the 10th century, see A. P. Kazhdan, "Iz istorii vizantijskoj hronografii X v.," *VizVrem* 20 (1961), 107–27.

<sup>35</sup> Skylitzes, 397–98.

<sup>36</sup> Psellos, I, 56. In his *Synopsis legum*, Psellos summarized the penalties for adultery: Weiss, "Die Synopsis Legum," 175. Attaliates mentions primarily Michael's piety, without a word about the problem: *Michaelis Attaliotae Historia*, Bonn ed. (1853), 8–10.

<sup>37</sup> Skylitzes, 415; cf. Psellos, I, 56, 62–63; Zonaras, III, 604–5.

<sup>38</sup> Zonaras, III, 596–97, 604–5; Psellos, I, 63, 83–84; Skylitzes, 415.

Skylitzes mentions a "Demetrios of Kyzikos" as one of the people who had written a historical narrative, and whom he presumably used as a source although, he says, with caution. "Demetrios of Kyzikos" is commonly identified with Demetrios, metropolitan of Kyzikos, also known as Demetrios Synkellos. He was made a synkellos by Romanos III, and "was much loved by him even before he (Romanos) acceded to the empire"; he therefore may be assumed to have written harshly of Romanos' presumed murderers. He also wrote a treatise in which he argued that the marriage between an uncle and his niece with an aunt and her nephew respectively was permitted, that is, he took a liberal attitude with regard to the church-imposed impediments to marriage; and in 1037 he led a party of opposition to Alexios the Studite. This circumstantial evidence permits the conjecture that Demetrios Synkellos was the source for Skylitzes' discussion of Zoe's two first marriages.<sup>42</sup>

If Skylitzes' information comes from an ecclesiastical source, the vehemence toward the adulterous second marriage of Zoe may well be his own. It surfaces again in the remarks on the "adulterous" marriage of Nikephoros III, in the continuation of the Chronicle. For whatever reason, it is clear that he was very much exercised about adultery. His highly critical attitude is closer to the strictures of civil and ecclesiastical law than is that of Psellos. His concern is, certainly, with the murder of Romanos, but he is perhaps even more critical of the adultery of which Zoe was guilty. In this, too, he is in accord with civil law, which sees adultery primarily as a crime committed by a married woman.<sup>43</sup> In the circumstances the crime could not be punished by law, for who could levy an accusation against Zoe? Skylitzes' comment, therefore, amounts to a request that the culprits punish themselves; that Michael, in effect, invalidate his marriage.

<sup>42</sup>On the favor shown to Demetrios of Kyzikos by Argyros, see Skylitzes, 375; on Demetrios' opposition to Alexios the Studite, see *ibid.*, 401. On his position toward marriage impediments, see above, p. 169, and Laiou, *Marriage*, chap. 1. On Demetrios of Kyzikos see, in the last instance, Pitsakis, *Tò κώλυμα γάμου*, 139–46, with exhaustive bibliography.

<sup>43</sup>See *Bas.*, 60.37.62, 60.42.13, 60.37.72, 28.5.12. There are other passages in Skylitzes that show an almost pious attitude toward chastity. Such is the passage about Isaac I Komnenos who, suffering from a kidney ailment, preferred cauterization and sterility to the alternative treatment which, apparently, was intercourse; since he seems to have been on campaign at the time, the woman would have had to be someone other than his wife: Skylitzes Cont., 109; repeated in Theognostos, 200.

Zoe's third marriage was fraught with problems of a different nature. Although, at the age of sixty-four, she was well over the canonical limit for third marriages, she was childless, and thus the marriage was not forbidden by the letter (it certainly was by the spirit) of the *Tomos henoseos*. It carried, however, a penance of five years without communion.<sup>44</sup> This would also be Monomachos' third marriage, so the problem was compounded, and evident even to the patriarch, who had been accommodating in the past. The chroniclers' reaction and criticism varies. Neither Psellos, nor Skylitzes, nor Zonaras makes an issue of Zoe's trigamy, unless one is to take as a very veiled criticism Psellos' statement that in 1042, after the dethronement of Michael V, some people thought that Theodora rather than Zoe would become empress, "because she had been the salvation of the people, and because she had not yet been married."<sup>45</sup> Since the same sources found it easy to criticize Zoe on other occasions, it cannot be that they were diffident toward her. The answer probably lies in Psellos' statement regarding Monomachos' relations with his second wife's first cousin, the beautiful Skleraina. Psellos says that after his wife's death, Monomachos, "being still a private individual, was ashamed to contract a third marriage, and also because this was not permitted by the laws of the Romans."<sup>46</sup> By implication, the statement suggests that the laws on third marriage did not apply with equal force to emperors. This interpretation of the emperor's freedom is not, of course, self-evident, given the problems of emperors such as Leo VI and Nikephoros Phokas, the latter of whom had been forced to perform penance for contracting a second marriage.<sup>47</sup> Still, our sources focus on Monomachos' rather than Zoe's trigamy, although even so not very strongly, and with varying degrees of

<sup>44</sup>Zepos, *Jus*, I, 195. The *Tomos*, as issued, was a law of both the state and the church.

<sup>45</sup>On Zoe's third marriage, see Skylitzes, 422 ff; Psellos, I, 122 ff; Zonaras, III, 614 ff. On Theodora, see Psellos, I, 122; cf. R. Guiland, "Les nocces plures à Byzance," *Etudes byzantines* (Paris, 1959), 256–57.

<sup>46</sup>Psellos, I, 141–42. What was not permitted by the laws of the Romans may refer to the fact that Monomachos and Skleraina were related by affinity to a prohibited degree, since she was his wife's first cousin (not niece, as in the sources): W. Seibt, *Die Skleroi* (Vienna, 1976), no. 16; cf. Vannier, *Les Argyroi*, no. 10, p. 35. They were therefore related in either the fourth or sixth degree, depending on how one counted (see Eustathios Romaïos in Rhalles-Potles, V, 344). The impediment for this particular relationship was not explicitly stated until the time of Michael Keroularios (1052): Rhalles-Potles, V, 40–45.

<sup>47</sup>Skylitzes, 261; cf. Guiland, "Noces plures," 255.



interest. Skylitzes does not mention the problem at all; he merely states that the couple was married by a priest of the Nea Ekklesia named Stypes.<sup>48</sup> Psellos is explicitly critical; he explains that the marriage was performed by a priest (and not the patriarch) because Alexios the Studite found it "necessary to submit to the common laws regarding marriage." The patriarch, however, kissed the couple after the ceremony, and Psellos labels him a hypocrite; the criticism is clearly directed toward the patriarch, not Zoe or Monomachos.<sup>49</sup> Zonaras is more explicit in naming the problem: Alexios did not want to perform the marriage himself because of the trigamy; criticism, if any, is unstated and implicit.<sup>50</sup> Attaleiates says nothing.

Skylitzes' lack of concern about multiple marriages is not, I think, an isolated instance. In discussing the marriage of Nikephoros Phokas to Theophano, he considered the patriarch wrong in exacting penance from the emperor because of the second marriage, while allowing him to be cleared, through the perjury of the key witness, of the far greater crime of having married a woman to whom he was related by the bonds of godparenthood.<sup>51</sup> Furthermore, if he is indeed the author of the continuation of his chronicle, his lack of concern becomes even clearer in the last problematic imperial marriage of the eleventh century, that of Nikephoros Botaneiates and Maria of Alania. That was Botaneiates' third marriage; he was an old man who had already had children, and therefore fell squarely within the prohibitions of the *Tomos henoseos*. But it took Nikephoros Bryennios to point out and name the trigamy, discussing Botaneiates' age in such a way as to suggest that he was explicitly thinking of the provisions of the legislation.<sup>52</sup> Skylitzes does not mention the trigamy; although he has grave objections to the marriage, they are based on grounds of adultery rather than tri-

gamy.<sup>53</sup> Before explaining this attitude it is necessary to look briefly at the circumstances of this union.

Botaneiates did not come to the throne as a result of a marriage. On the contrary, Michael VII Doukas was deposed by a group of conspirators, and Constantinople remained without an emperor for three days, until the arrival of Botaneiates.<sup>54</sup> Michael VII became a monk either immediately after his deposition or after Botaneiates' arrival in Constantinople.<sup>55</sup> Most sources agree that Michael was *forced* to become a monk; only Bryennios suggests that he did so voluntarily, although surely under duress and out of fear of worse evils.<sup>56</sup> Then Botaneiates was duly proclaimed and crowned emperor, along with his second wife, a certain Vevdene.<sup>57</sup> Subsequently, at an uncertain time, Vevdene died, and there began a series of negotiations about whom Botaneiates would marry next. Among the candidates, the continuation of Skylitzes mentions Zoe, daughter of Constantine Doukas and sister of Michael VII, and many other girls of senatorial rank. But he wanted either Eudokia, "the wife of Doukas and then Diogenes," or Maria of Alania, "wife of Michael, who had recently ruled." His first choice, Eudokia, was very eager to contract the marriage, but was stopped by a holy man named (appropriately enough) Panaretos, who reminded her "of many things that could put an end to her eagerness."<sup>58</sup> So, continues our author, "the emperor married Maria shamelessly, and the priest was immediately deposed, because of the evident adultery."<sup>59</sup> It was after this, still according to the Continuator of Skylitzes, that Mi-

<sup>48</sup> Skylitzes, 423.

<sup>49</sup> Psellos, I, 127.

<sup>50</sup> Zonaras, III, 617: διὰ τὴν τριγαμίαν ὑὸ λαβήθη τὴν ἐπὶ τῇ συναφείᾳ τελετὴν αὐτοῦργῆσαι αὐτοῖς. Later in life, Zonaras was to give an expansive interpretation of the *Tomos*, claiming that even a second marriage incurred penance; but, he wrote, in his day this was a dead letter; Rhalles-Potles, III, 80.

<sup>51</sup> Skylitzes, 261.

<sup>52</sup> *Nicéphore Bryennios, Histoire*, ed. P. Gautier (Brussels, 1975), 251–53. On Botaneiates' accession and marriage, see Zonaras, III, 719–22; Skylitzes Cont., 177–78, 181–82; *Alexiad*, I.12, III.2; Bryennios, 247–55. Attaleiates, 256–70, says nothing about the marriage. Cf. B. Leib, "Nicéphore III Botaneiatès et Marie d'Alanie," *Actes du VIe Congrès international d'études byzantines*, I (Paris, 1950), 129–40.

<sup>53</sup> Skylitzes Cont., 181–82; cf., in the same vein, Zonaras, III, 722.

<sup>54</sup> Skylitzes Cont., 177–78; Attaleiates, 270 ff.

<sup>55</sup> Skylitzes Cont., *ibid*; Attaleiates, 270; Zonaras, III, 719.

<sup>56</sup> Bryennios, 251–53.

<sup>57</sup> Skylitzes Cont., 181–82; he is the only one to provide the name of Botaneiates' second wife.

<sup>58</sup> Skylitzes Cont., 181–82; Zonaras, III, 722. Anna Komnene, *Alexiad*, III.2, also hints that there would be a scandal if Botaneiates married Eudokia. One hopes they mean something other than trigamy. Eudokia had been forced to become a nun (Attaleiates, 168–69, 304; Skylitzes Cont., 152). We do not know, but may suspect, that Panaretos would consider this a serious impediment. She had also taken a solemn oath not to remarry after Constantine X's death; although she had been allowed, for reasons of state, to break it at the time of her marriage to Romanos IV, perhaps another marriage would have seemed out of place.

<sup>59</sup> Skylitzes Cont., 182: Ἀγεται τοῖνον τὴν Μαρίαν ἀπηρυθριασμένως ὁ βασιλεὺς καὶ ἱερολογεῖται αὐτῇ, καὶ παρ' αὐτῆς καθαιρεῖται ὁ ἱερεὺς ὡς προφανῶς μοιχεύας τετελεσμένης.

chael VII, who had already been made a monk, was tonsured and made metropolitan of Ephesos, although he visited his see only once. Eventually Maria of Alania became a nun, after Botaneiates' death, and obtained Michael's pardon, "for the injuries done to him." The much longer and more vivid account of Nikephoros Bryennios, who ascribes the whole affair to the complicated intrigues of the Caesar John Doukas, presents the following points of interest. First, unlike Skylitzes, Bryennios claims that Vevdene was alive at the time of Botaneiates' marriage to Maria of Alania. This information is probably untrue, and just a case of gilding the lily of Botaneiates' transgression. Second, Bryennios claims that the priest who originally was to perform the ceremony hesitated because, Maria's husband and Botaneiates' wife still being alive, he was loath to bless an adultery along with a trigamy (the two impediments are presented in that order). Third, the Caesar John Doukas, with remarkable acuity, recognized instantly that there was a problem, and feared lest the patriarch dissolve the marriage and turn once again to Eudokia Makrembolitissa. So he quickly and unobtrusively produced another priest, who blessed the union.<sup>60</sup>

Attaleiates, the major eleventh-century source for the accession of Botaneiates, breathes not a word about the marriage. This is not because of ignorance of the problems. He can hardly have been unaware of the facts, and he knew very well the marriage laws, including the one that brands as an adulterer the man who marries two wives.<sup>61</sup> Attaleiates's silence is the clearest proof that in his milieu Botaneiates' marriage was considered tainted; not being able to excuse it, the historian prefers to ignore it.<sup>62</sup>

Those sources that do discuss this marriage label it adulterous. B. Leib has suggested that the authors used the term adultery rather than trigamy because they were not arguing as jurists,<sup>63</sup> but this is surely not sufficient. Not only was Skylitzes (and Zonaras, who follows him) a perfectly good jurist, but the law on trigamy was far from arcane; since it was read from the ambo once a year, everyone must have known it.<sup>64</sup> Furthermore, if the Caesar

John Doukas, who was neither a fool nor ignorant of the laws, was afraid that the marriage would be dissolved, it must have been adultery he had in mind, not trigamy.<sup>65</sup> The first was, indeed, a diriment impediment. As for the second, in the late eleventh century there were those who argued that the marriage of old people who had children should be dissolved before they could be admitted to communion; but the same source suggests that such was not the common practice.<sup>66</sup> The conclusion, therefore, must be that Skylitzes (and even Bryennios, who makes adultery the first impediment, trigamy the second) knew very well what he was saying and that he was most bothered by the adultery, not by the trigamy. It is this attitude that has to be explained.

Multiple marriages seem to have been quite a common phenomenon in the Byzantine Empire. Already the Tomos henoseos complained about their frequency and sought to regulate them. In the late eleventh century, canonical responses show that the church itself was moderating its position, at least with regard to second marriages. Although Patriarch Sisinnios had forbidden the use of the nuptial crown for a second marriage, Niketas of Herakleia asserted, in the 1080s, that in the Great Church in Constantinople crowns were, in fact, used, although a short penance was imposed.<sup>67</sup> In the same period the chartophylax Nikephoros wrote that, in Greece particularly, third marriages of old people, with children, were frequent. Although he considers this "unpardonable fornication," the fact remains that it apparently was a common occurrence. The same point was made by Niketas of Ankyra in 1092.<sup>68</sup> In the early thirteenth century a certain number of third and even

note 25. The widespread acquaintance with the law on trigamy is further illustrated by Balsamon's response to a question posed by Patriarch Mark of Alexandria, namely, whether an ignorant priest may be excused for performing a third marriage. Balsamon replied that rusticity may excuse ignorance of the fine points of the law, not of something that is well known to everyone: οἱ δὲ χωρεῖται, λεπτότητα νόμου ἡγνοησάτεες, ἐνίοτε συγγνώσκονται, οὐ μὴν τὰ πᾶσι δῆλα νόμιμα: Rhalles-Potles, V, 495.

<sup>60</sup> On John Doukas, see B. Leib, "Jean Doukas, césar et moine: Son jeu politique à Byzance de 1067 à 1081," *AnalBoll* 68 (1950), 163–80. His library included, along with a manuscript of the *De administrando imperio*, a copy of the *Synopsis Basilicorum*, made at his command: Weiss, "Juristische Bibliothek," 81.

<sup>61</sup> Gautier, "Le chartofylax Nicéphore," 186–87.

<sup>62</sup> A. Pavlov, "Kanoničeskie otvety Nikity, Mitropolita Irakliškogo," *VizVrem* 2 (1895), 167.

<sup>63</sup> Gautier, "Le chartofylax Nicéphore," 186–87; J. Darrouzès, *Documents d'ecclésiologie byzantine* (Paris, 1966), 268–75.

<sup>60</sup> On the various accounts of the marriage, and the politics behind it, see Leib, "Nicéphore III."

<sup>61</sup> Attaleiates, *Poimema Nomikon*, 476 (= *Bas.*, 60.37.84); cf. *ibid.*, 439.

<sup>62</sup> Cf. the silence of Psellos on Michael IV's marriage, and B. Leib, "Les silences d'Anne Comnène," *BSI* 19 (1958), 1–10.

<sup>63</sup> Leib, "Nicéphore III," 135.

<sup>64</sup> P. Gautier, "Le chartofylax Nicéphore," *REB* 27 (1969), 185

fourth marriages appear among the cases that came before Chomatenos' court.<sup>69</sup> One must recall that civil legislation had not, until the time of Leo VI, forbidden or punished third marriages. And it seems that lay society, especially its upper strata whose views Skylitzes frequently expressed, still found ways to contract third marriages when it suited their interests.<sup>70</sup> That is undoubtedly why the Caesar John Doukas feared that if Botaneiates' marriage to Maria of Alania were to be dissolved he would marry Eudokia Makrembolitissa—without stopping to consider that it would be Eudokia's (and, of course, Botaneiates') third marriage. It may well be that Skylitzes did not criticize imperial third marriages because he was not critical of third marriages generally; that he was, as in the positions we know he took as a judge, sympathetic to the needs of lay society, and more specifically of the lay aristocracy, which were coming into conflict with the policies of the church in issues of matrimonial law and practice. If this is so, it gives added support to the statement that there is a strain in Byzantine thought that considers general acceptance of laws to be a test of their validity, and thus that there is a bilateral relationship between the lawgiver and the subjects.<sup>71</sup>

On the other hand, Skylitzes branded Botaneiates' marriage as adultery, presumably because he did not consider Maria of Alania divorced from her first husband, Michael VII, who had entered the monastery not of his own free will but by compulsion. The issue is the same as in the case of the "divorce" of Romanos III, except that on that occasion Skylitzes had persuaded himself that Helen had become a nun voluntarily. Divorce was a civil matter, regulated by civil law; it may have been the flagrant abuse of the *bona gratia* divorce that made Skylitzes so critical. That he was concerned about the general effects of the abuse is indicated by the story he repeats of a candidate for the hand of Zoe and the throne, a man named Constantine Arto-klines. Zoe preferred him to Monomachos, but he was poisoned by his wife, "not because she was ill-disposed toward him, but rather because she was about to lose him while she was still alive." Psellos, it should be noted, simply mentions that the man

died, without reporting the cause of his death.<sup>72</sup> Much later, in the reign of Andronikos I, a number of women of the aristocracy were forced by the emperor to take the veil; but the church allowed them, after Andronikos' death, to leave the monastery and return to their husbands—thus not recognizing either their forced enclosure or the dissolution of their marriages.<sup>73</sup>

The historians of the eleventh century have been seen to have a variegated approach to the problematic imperial marriages of the period. Their response ranges from the information blackout practiced by Attaleiates to the sustained and, I think, fairly consistent criticism of Skylitzes. Some of the differences are to be attributed to the authors' attitudes (favorable or unfavorable) to particular emperors. But one must also remember that this was a changing and fluid society, with a certain lack of consensus, where people like Psellos were more attuned to the current palace mores, while Skylitzes retained a conservative posture. As far as this historian is concerned, we have seen that he was particularly sensitive to two issues, which sometimes are connected, namely, adultery and coerced divorce. He was much less interested in multiple marriages, less bothered than even Psellos by them. In this he probably expressed a more general social attitude, one that opposed the restrictions placed upon marriage by the church. Always assuming that Skylitzes is the author of the continuation, he was writing after the debates of 1092, in which he (and to some extent Alexios I) had taken a position different from that of the church in matters affecting marriage. It is possible, although of course it must remain a matter of speculation, that his "moral" criticism of Botaneiates' marriage was colored by the legal and social issues raised by that debate.

Implicit in the critique of the eleventh-century

<sup>72</sup> Skylitzes 423; Psellos, I, 123; cf. Zonaras III, 614–5, who does not have any source independent of Psellos and Skylitzes.

<sup>73</sup> Balsamon in Rhalles-Potles, III, 28. In the 11th century forced entry into a monastery was also not considered valid: see the case of Zoe in Psellos, I, 100, 123. B. Leib, "Un basileus ignoré: Constantin Doukas (1074–1094)," *BSI* 17 (1956), 346, thinks that Michael VII was made a bishop in order to make possible the marriage of Maria of Alania to Botaneiates. However, this misrepresents Trullo 48, which says that the wife of a prospective bishop must divorce "by mutual consent," and must enter a monastery after he has been ordained. The 12th-century canonists argued powerfully that the wife should enter the monastery before the bishop's ordination, and they insisted that she must have a free choice of whether or not to grant the divorce; if she refuses, the ordination does not take place. On this, see Laiou, *Marriage*, chap. 4.

<sup>69</sup> A. Laiou, "Contribution à l'étude de l'institution familiale en Epire au XIII<sup>e</sup> siècle," *Fontes Minores*, VI (1984), 280.

<sup>70</sup> On Skylitzes' attitude, see Tinnefeld, *Kaiserkritik*, 120–21; Kazhdan, "Social Views of Attaleiates," *passim*.

<sup>71</sup> H.-G. Beck, "Res publica Romana: Vom Staatsdenken der Byzantiner," *SBMünch* (1970), Heft 2, 28 ff.

historians is the idea that the emperors should not be above the laws. It is true that their argumentation rarely addresses that question directly, except for Psellos' statement that Zoe and Constantine IX Monomachos had to conform to the public laws.<sup>74</sup> Indeed, the one formal statement on the question by a historian comes in Attaleiates' *Poima nomikon*, where he glosses *Basiliika*, 2.6.1 (ὁ βασιλεὺς τοῖς νόμοις οὐχ ὑπόκειται) by adding: τουτέστιν, ἐὰν ἀμάρτη οὐ κολάζεται.<sup>75</sup> But this statement is belied by his own treatment of Botaneiates' marriage; although he might have argued that the emperor was not subject to the laws, he preferred total silence. As for Skylitzes, his view that Michael IV should abdicate and cast out Zoe is an unambiguous indication that he did, indeed, consider emperors to be subject to the common laws.

A number of scholars have drawn attention to the limitations of imperial autocracy, limitations that are latent or explicit in Byzantine political thought.<sup>76</sup> The examination of eleventh-century critiques of imperial marriages shows that even in this private sphere, where emperors had traditionally reserved for themselves the right to exercise *oikonomia*,<sup>77</sup> their actions were not considered to be either free of legal strictures or, certainly, beyond criticism. The criticism of this aspect of imperial behavior is diffuse in the sense that it does not often lead the historians to broad "constitu-

tional" statements such as we find in the twelfth century. It is also traditional, in the sense that retribution takes the form of divine punishment of emperor and empire.<sup>78</sup> However, it transcends mere moralizing, or pious criticism, in at least two ways. First, sometimes it connects with more general issues of *Kaiserkritik*. Thus Skylitzes' objections to Michael IV's crimes extend to a "political" statement, namely, that the emperor used public funds (τῶν δημοσίων καὶ κοινῶν) to buy off his private sins. In the same fashion Psellos accuses the amorous Constantine IX of emptying the imperial treasury for Skleraina and spending the treasures of the Romans on his Alan mistress and her relatives.<sup>79</sup> In both cases private morals have a public expression and harm the state and the common good; we have here instances of a frequent form of criticism, whereby the emperor is accused of appropriating public funds for private purposes. Second, when imperial mores lead to divine retribution, when, therefore, they are responsible for evils befalling the state, the emperor or empress becomes subversive of order. Surely this is the obligato in Skylitzes' account, and it is no accident that he records a near rebellion in Constantinople caused by public reaction to the scandalous affair of Constantine IX Monomachos and Maria Skleraina.<sup>80</sup> This is certainly not to suggest that our historians thought that dubious imperial morals justified revolution, but rather to underline that their criticism has broader implications than is at first apparent.

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<sup>74</sup>Cf. Psellos' statement that Monomachos could not marry his Alan mistress because of the law which forbade a fourth marriage: Psellos, II, 46; cf. Zonaras, III, 647–48.

<sup>75</sup>Zepos, *Jus*, VII, 497.

<sup>76</sup>See Beck, "Res publica Romana," and idem, "Senat und Volk von Konstantinopel," in his *Ideen und Realitäten in Byzanz* (London, 1972), no. XII; P. Magdalino, "Aspects of Twelfth-Century Kaiserkritik," *Speculum* 58 (1983), 326–46. Cf. A. P. Kazhdan, "O social'noj prirode vizantijskogo samodržavija," *Narody Azii i Afriki* (1966), no. 6, 52–63.

<sup>77</sup>See P. Noailles and A. Dain, *Les Nouvelles de Léon VI le Sage* (Paris, 1944), 355–57, repeated by Alexios I Komnenos in Zepos, *Jus*, I, 323 ff. Cf. D. Simon, "Princeps legibus solutus," in *Gedächtnisschrift für Wolfgang Kunkel* (Frankfurt, 1984), 478–79.

<sup>78</sup>Apart from Skylitzes on the divine punishment visited upon Michael IV, see Psellos' statement that Constantine IX's pleasures were one of the causes of the decline of the empire: Psellos, I, 141.

<sup>79</sup>Psellos, I, 144; II, 46–47; on criticism of other emperors along similar lines, see Magdalino, "Kaiserkritik," 330–31 and Beck, "Res publica Romana," 16.

<sup>80</sup>Skylitzes, 434.